

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUROSESMILLAS, S.A.,

Plaintiff,

v.

PLC DIAGNOSTICS INC., et al.,

Defendants.

Case No. [17-cv-03159-MEJ](#)

**ORDER RE: MOTION TO DISMISS**

Re: Dkt. No. 46

Plaintiff filed a motion to dismiss, which is scheduled to be heard on December 7, 2017. Mot., Dkt. No. 46. Plaintiffs and Defendants have consented to the jurisdiction of the undersigned. Dkt. Nos. 8 (Plaintiff), 15 (Defendants). On October 17, 2017, Defendants filed a third party complaint against Mohan Uttarwar and Piyush Gupta. Dkt. No. 31. They sent a notice of waiver to the third party defendants on October 23, 2017. Dkt. Nos. 49, 50. Both third party defendants executed waivers of service, such that their response to the third party complaint is not due until December 22, 2017. *Id.* (both). Neither third party defendant has yet consented to the undersigned's jurisdiction. In light of this, it appears the undersigned does not have jurisdiction to decide the pending Motion. *See Williams v. King*, -- F.3d --, 2017 WL 5180205 (9th Cir. 2017) (“[J]urisdiction cannot vest until the court has received consent from all parties to an action”— including unserved defendants); *see also* 28 U.S.C. § 636(c)(1).

The Court accordingly VACATES the December 7, 2017 hearing on the Motion, and will await the third party defendants' appearance and notice of consent or declination to magistrate judge jurisdiction before proceeding.

The initial Case Management Conference (CMC) in this action is scheduled on January 11, 2018. *See* Dkt. No. 47. A joint CMC Statement is due one week before the CMC; the third party

1 defendants shall indicate no later than that date whether they consent or decline to the  
2 undersigned's jurisdiction.

3 **IT IS SO ORDERED.**

4  
5 Dated: November 27, 2017

6  
7   
8 \_\_\_\_\_  
9 MARIA-ELENA JAMES  
10 United States Magistrate Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California